



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

January 10, 1990

The Honorable John Wettaw
Arizona State Representative
State Capitol, House Wing
1700 West Washington
Phoenix, Arizona 85007

Re: I90-007 (R89-113)

Dear Mr. Wettaw:

You have asked us to clarify several concerns you have about law enforcement responsibilities on the waterways of Arizona. Specifically, you asked:

1. Which among several state, federal and county agencies has ultimate law enforcement responsibility on the waterways of this state? Specifically, what is the county sheriff's responsibility on boating safety issues?

2. What is the county sheriff's responsibility, if any, to patrol and enforce Arizona law at a boating event scheduled on a waterway in this state based upon his prior knowledge of the event?

3. If state funding for State Lake Improvements and Boating Law Enforcement Safety is cut back or eliminated, does the county sheriff nonetheless have the same level of responsibility for public safety on the waterways?

Based on the following discussion, we conclude that county sheriffs in Arizona are primarily responsible for

enforcement of state laws, including boating safety laws, on state waterways located in unincorporated areas within their jurisdictions. Municipal police are primarily responsible for law enforcement on waterways in cities and towns within their jurisdiction. The degree of funding through the State Lake Improvement Fund or Boating Law Enforcement Safety Fund does not increase or diminish those responsibilities.

The boating laws governing the operation of watercraft upon the waterways in Arizona, including boating safety laws, are contained in Arizona Revised Statutes, Title 5, Chapter 3. A.R.S. § 5-302 provides:

- A. The provisions of this chapter apply to all watercraft operating on all of the waterways of this state, including that part of the waters common to interstate boundaries which is within the boundaries of this state, excluding vessels owned by agencies of the federal government in performance of their official duties.

The general powers and duties of the sheriff are contained in A.R.S. § 11-441, which provides, in part:

- A. The sheriff shall:
 - 1. Preserve the peace.
 - 2. Arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense.

The sheriff is, by definition, a "peace officer." A.R.S. § 1-215(23). The general duties of peace officers to enforce state laws on the waterways of this state are stated in A.R.S. § 5-391(B):

- B. All peace officers of the state, counties and cities shall enforce the provisions of this chapter and all laws and regulations relating to the operation of watercraft.

This office has previously concluded that, as a practical matter, the responsibility for routine law enforcement

in Arizona has been assumed by sheriffs and the Department of Public safety in unincorporated areas and on the highways, and by municipal police in cities and towns. Ariz. Atty. Gen. Op. 184-167; Ariz. Atty. Gen. Op. 166-4. Which agency among several state, county and federal agencies actually has primary law enforcement responsibility in a particular situation may depend upon several factors, including location of the waterway, agreements or understandings about law enforcement responsibilities between those agencies, location of the actual violation upon the waterway, etc. However, as a general rule, the county sheriff is primarily responsible for law enforcement activity on the waterways located in unincorporated areas in a county.^{1/} The cities and towns are likewise primarily responsible for law enforcement on the waterways located within their incorporated boundaries.

Jurisdiction over the boundary waters of the Colorado River is governed by the Interstate Compact for jurisdiction on the Colorado River, A.R.S. § 37-620.11, which provides, in pertinent part:

- A. If conduct is prohibited by two adjoining party states, courts and law enforcement officers in either state who have jurisdiction over criminal offenses committed in a county where the Colorado River forms a common interstate boundary have concurrent jurisdiction to arrest, prosecute and try offenders for the prohibited conduct committed anywhere on the boundary water between the two states.

Therefore, the general rule stated above also applies to the boundary waters of the Colorado River as required by A.R.S. § 5-302(A), quoted above.

1. A law enforcement officer's status as a "peace officer" also requires him or her to enforce the laws of this state in immediate situations even when in other locations within Arizona outside his county. A.R.S. § 13-3883 (a peace officer may, without a warrant, arrest a person who commits a felony or misdemeanor in his presence); Ariz. Atty. Gen. Op. 65-10-L (all state, county and city law enforcement officers have a duty to enforce state laws generally, including motor vehicle laws).

We next address your inquiry regarding responsibility to enforce Arizona law at a "scheduled boating event" on a waterway in a county of this state. As we have stated earlier in this opinion, the county sheriff is responsible for the enforcement of the laws at such an event within his jurisdiction as a normal law enforcement activity. Because the question of liability for enforcement at any specific boating event based upon the particular facts or circumstances surrounding that event would more properly be resolved in the courts, we decline to answer that question. See Ariz. Att'y Gen. Op. 179-245.

Finally, we address your inquiry regarding state funding in relation to the level of responsibility for public safety on the state's waterways. Law enforcement responsibilities on the waterways of this state are not dependent upon the amount of funding received from the State Lake Improvement Fund or the Law Enforcement and Boating Safety Fund. The State Lake Improvement Fund was established by A.R.S. § 5-382 and, in general, allows monies appropriated annually by the legislature to be granted by the Arizona State Parks Board to enumerated public entities, including cities and towns, for specific, limited types of projects which have been examined and approved by the Arizona Outdoor Recreation Coordinating Commission established under A.R.S. § 41-511.25. Law enforcement is not among the enumerated projects. A.R.S. § 5-382(A)(2). We conclude, therefore, that the amount of monies in such fund does not affect the responsibilities of the counties, cities or towns for public safety on the waterways of Arizona.

The Law Enforcement and Boating Safety Fund was established under A.R.S. § 5-383. Generally, it establishes a fund composed of monies generated from watercraft license taxes imposed under A.R.S. § 5-323. The fund monies are appropriated annually by the legislature and are administered by the Arizona State Parks Board. A.R.S. § 5-383(A). Only counties may apply for grants from the fund, the recipients of which are determined and funds allocated by the Arizona Outdoor Recreation Commission. A.R.S. § 5-383(B)(C). One of the factors which may be used to determine eligibility for such funds is, among other things, the "adequacy of existing county boating safety programs which include accident investigations." § 5-383(C)(1). The purpose for the use of the funds is stated in A.R.S. § 5-383(D):

The monies distributed to a county shall be used by the law enforcement agencies of the county solely for boating law enforcement, personnel, equipment and training.

Because a criteria for receipt of Law Enforcement and Boating Safety Fund monies may be an already existing county boating safety program, we conclude that these fund monies are intended to augment, where appropriate, the sheriff's already existing capabilities to carry out his mandated responsibilities for boating law enforcement. The amount of monies in such funds does not affect the sheriff's responsibilities in this regard.

In conclusion, as a general rule, county sheriffs in Arizona are primarily responsible for enforcement of state laws, including boating safety laws, on the waterways of this state located in unincorporated areas within their jurisdictions. Municipal police are responsible on waterways in cities and towns. The responsibility for that enforcement is not affected by the amount of funding they receive, if any, from the State Lake Improvement Fund or the Law Enforcement and Boating Safety Fund.

Sincerely,



BOB CORBIN
Attorney General

BC:JRA:sh